



SAN LUIS OBISPO COUNTY

## DEPARTMENT OF PLANNING AND BUILDING

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DIRECTOR

### MEMORANDUM

TO: Agricultural Liaison Advisory Board

FROM: Michael Conger, Current Planning  
Murry Wilson, Current Planning

DATE: August 3, 2009

SUBJECT: Frequently Asked Questions about Amendments to the Agricultural Exemption Program

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**1. Are the changes proposed under the Public Review Draft of the Grading Ordinance going to be the end result?**

The changes proposed under the Public Review Draft are staff's initial recommendation. This draft will be reviewed and amended by the Planning Commission. The Planning Commission will then forward their recommendation to the Board of Supervisors who will also review and amend the ordinance proposal as they see fit. The Public Review Draft proposal is not set in stone.

The Planning Department welcomes public input to the process. The Commission and Board will both be able to consider public input and alternative recommendations provided by outside agencies and advisory boards. There are several opportunities for public comment:

- *Scoping* – We are presently accepting comments relating to scoping of the Environmental Impact Report (EIR). These comments will generally be about possible impacts resulting from the ordinance, ideas for mitigation measures, and ideas for alternative projects to be considered by the EIR. These comments are being accepted until August 6.
- *Draft EIR* – Once the Draft EIR is completed, the public will have an opportunity to comment on the document for 45 days. The Final EIR will contain a written response to each comment received. We anticipate this will be in late August to September.
- *Planning Commission Hearing* – The public can comment on the proposal either in writing or by providing public testimony at the Planning Commission hearing(s). We anticipate hearings will occur in October.
- *Board of Supervisor Hearing* – The public comment on the proposal either in writing or by providing public testimony at the Board of Supervisors hearing(s). We anticipate hearings will be in early 2010.

## **2. Why are changes being proposed to the agricultural grading procedures?**

Changes are proposed to the agricultural grading requirements because these have historically been difficult to enforce. The Regional Water Quality Control Board is requiring that the County enhance its enforcement procedures.

While true agriculturalists have been following the agricultural exemption requirements (there have been very few enforcement actions taken on agriculturalists for misuse of the exemption), the Level 1 and Level 2 exemptions create what is effectively a loophole. This loophole is often used by non-agriculturalists to justify grading for roads and pads intended to support non-agricultural development. This can create huge problems, particularly in areas with erosive conditions and sensitive resources. Resolving these cases often takes years and can involve multiple state and federal agencies.

Some examples of misuse of agricultural exemptions include:

- A homebuilder grading a redrock-based 25-foot wide road over 2 miles in length leading to several pads, allegedly for a small future cattle operation.
- A homebuilder creating several ponds as a water feature enhancement for a new subdivision.
- A landowner with no prior agricultural history grading a road and building pad and then subsequently submitting building permits which propose to use the now pre-existing agricultural road.
- A landowner with no prior agricultural history creating a building pad for a 10,000 square foot home, while stating that the excavation was intended to support an orchard.

These projects tend to be the most cumbersome enforcement cases for the following reasons:

- When no erosion and sedimentation control measures are employed, this can result in severe erosion impacts and affecting streams, watercourses, and other properties down gradient.
- Siltation of streams may result in the involvement of such agencies as Regional Water Quality Control Board, Department of Fish and Game, and the US Army Corps of Engineers.
- Excessive site disturbance and vegetation removal in areas where sensitive species reside could require substantial mitigation.
- Excessive site disturbance could trigger land use permit requirements, causing substantial unforeseen delays to the permitting process for the property owner.
- Co-ordinating permitting procedures amongst multiple agencies can take years to do.

## **3. What percentage of agricultural grading projects become code enforcement cases?**

The County presently does not track agricultural exempt projects. As a result, we have no knowledge as to what percentage of agriculturally exempt projects result in code enforcement cases. The fact that so few enforcement cases arise on land actively under agricultural production suggests that few legitimate agriculturalists violate the exemption requirements.

## **4. What percentage of code enforcement cases are associated with agricultural grading?**

Since 2003, there have been 350 code enforcement cases investigating grading without permits. Over the last year (July 2008 to present), there have been 51 grading enforcement cases. Of these cases, 43 percent

were related to agriculture. The majority of the agricultural grading enforcement cases (91%) were investigated and were investigated to determine the presence of a violation.

<b>Grading Enforcement Cases</b>	<b>Agricultural</b>	<b>Non-Agricultural</b>	<b>TOTAL</b>
No Violation	2 (9%)	10 (34%)	12 (24%)
Potential Violation	20 (91%)	19 (66%)	39 (76%)
<b>TOTAL</b>	<b>22 (43%)</b>	<b>29 (57%)</b>	<b>51</b>

<b>Agricultural Grading Cases</b>	<b>Percentage</b>
Roads	64%
Ponds	9%
Other	27%

Virtually all of the code enforcement cases relating to grading on agriculturally-designated land were the result of non-agriculturalists misusing and abusing the exemption process. In many cases, these individuals maintain that they were unaware of agricultural exemption requirements. While the number of enforcement cases is relatively low when considering legitimate agricultural uses of the exemption, the impact of the violations is substantial. In many cases, these parties fail to employ appropriate agricultural practices and erosion and sedimentation control measures. This can result in severe erosion and impacts to watercourses (siltation/sedimentation). Resolving such violations can require the participation of multiple state and federal agencies, such as the Department of Fish and Game, Regional Water Quality Control Board, US Fish and Wildlife Service, and Army Corps of Engineers.

Investigating and resolving these violations requires a huge amount of staff time. This is particularly the case if resolving a violation requires the participation of a state or federal agency. The permit fees and violation fines we collect in these cases seldom offset the amount of staff time required. Additionally, if the County fails to adequately enforce stormwater management provisions, we could face substantial fines from the Regional Water Quality Control Board. Hence, the County has a financial interest to reduce the number of grading violations that occur.

##### **5. Why should agriculturalists have to suffer additional regulations when they are not the ones who are causing the problems?**

They shouldn't. It's unfortunate that some individuals choose to misuse ordinance provisions. We are under orders from the state to step up enforcement, and the agricultural exemption provisions are, regrettably, our weakest link in terms of grading violations. Our ideal would be to create ordinance provisions which would prevent misuse of exemptions while keeping the exemption program in place for legitimate use.

We have proposed requiring the completion of an exemption form prior to initiating the work. The form is envisioned to be an "over-the-counter" type of process, similar to the process we use for agricultural exempt structures. The purpose of the form is to ensure that landowners are familiar with their responsibilities under the exemption program, and to have a record of where agricultural exempt grading is proposed. Additionally, this process will aid code enforcement, as sites being graded without having previously completed the form will be in clear violation.

Having the requirement for the exemption form was envisioned as a means of reducing grading violations without severely impacting legitimate agricultural grading. We remain open to other ideas that would

help to reduce misuse and abuse of agricultural grading exemptions while keeping the exemption process flexible for agriculturalists.

Another proposal was to require new agricultural roads to go through the alternative review process. The reason behind this is that agricultural roads tend to be the most common agricultural grading enforcement case (roughly 64%). By going through alternative review, the Agricultural Commissioner will have an opportunity to consider the need for the agricultural road, and the Natural Resources Conservation Service (NRCS) or Resource Conservation District (RCD) will be able to oversee the project to ensure appropriate practices are used.

We believe that by incorporating these modifications, the frequency and severity of enforcement cases for agricultural grading will be reduced.

## **6. How much is 50 cubic yards?**

Projects involving fewer than 50 cubic yards of grading are not considered “grading” under the proposed ordinance, except when they involve work in a watercourse (20 cubic yards is the threshold in those cases). Therefore, these small projects are not subject to a County grading permit, and are not subject to the exemption restrictions.

50 cubic yards is a relatively small threshold. It is roughly equivalent to the volume of a one-car garage or the capacity of three trailer trucks. Cut and fill is added, so if you are cutting 25 cubic yards from one location and filling it in another location, this would trigger the 50 cubic yard threshold.

Here are a few practical examples of when the 50 cubic threshold might be reached:

- For a 16 foot wide road involving cut of 3 feet and fill of 3 feet – a length of 56 feet would involve about 50 cubic yards of site work.
- For a pond/basin 2 feet deep, a surface area of 675 square feet (i.e. 25 feet by 27 feet) would involve about 50 cubic yards of site work.
- Creating a level field 50 feet wide on 10% slopes – a length of about 20 feet would involve about 50 cubic yards of site work.

Projects involving 50 cubic yards or more of site work will be subject to the proposed grading ordinance. These projects may still be exempt or may qualify for alternative review.